

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

GABRIEL ECKARD,

Plaintiffs,

v.

ALTA LANGDON, *et al.*,

Defendants.

Case No. C19-0579-JCC-MAT

ORDER RE: PLAINTIFF'S
CONSOLIDATED MOTION

This is a civil rights action brought under 42 U.S.C. § 1983. This matter comes before the Court at the present time on plaintiff's "consolidated motion" in which he asks that the Court grant him an interlocutory appeal of its February 19, 2020 Order, that he be given additional time to file a response to defendants' pending summary judgment motion, and that he be provided copies of documents previously filed with the Court to aid in the preparation of his response to defendants' summary judgment motion. (Dkt. 48.) Defendants oppose plaintiff's motion and ask the Court to move on to consideration of their pending motion for summary judgment. (Dkt. 50.) The Court, having reviewed plaintiff's motion and the various requests for relief included therein, defendants' response to the motion, and the balance of the record, hereby ORDERS as follows:

(1) Plaintiff's request for certification of an interlocutory appeal (Dkt. 48) is DENIED.

ORDER RE: PLAINTIFF'S
CONSOLIDATED MOTION - 1

1 Plaintiff asks that the Court grant him an interlocutory appeal so that he may appeal the Order
2 issued by this Court on February 19, 2020 which, among other things, denied plaintiff leave to
3 conduct discovery after the discovery period established by the Court had closed. (*See* Dkt. 44 at
4 3-4.) Plaintiff indicates that he requires the interlocutory appeal so that he may have the
5 opportunity to conduct discovery and to then submit a meaningful response to defendants'
6 summary judgment motion. (Dkt. 48 at 1.)

7 The Court presumes that plaintiff brings his request under 28 U.S.C. § 1292(b) which
8 “provides for interlocutory appeals from otherwise not immediately appealable orders, if
9 conditions specified in the section are met, the district court so certifies, and the court of appeals
10 exercises its discretion to take up the request for review.” *City of Los Angeles, Harbor Div. v.*
11 *Santa Monica BayKeeper*, 254 F.3d 882, 885 (9th Cir. 2001) (quoting *Caterpillar Inc. v. Lewis*,
12 519 U.S. 61, 74 n.10 (1996).) Section 1292(b) permits a court to certify a non-final order for
13 interlocutory appeal where it “involves a controlling question of law as to which there is substantial
14 ground for difference of opinion” and where “an immediate appeal from the order may materially
15 advance the ultimate termination of the litigation.” 28 U.S.C. § 1292(b).

16 Plaintiff submitted a notice of appeal to the Court in conjunction with his consolidated
17 motion. (*See* Dkts. 46, 48 at 2.) An appeal was thereafter opened, and the appeal has since been
18 dismissed by the Court of Appeals. (*See* Dkts. 47, 52.) In its brief order dismissing plaintiff's
19 appeal, the Court of Appeals noted in particular that discovery orders are not immediately
20 appealable. (*See* Dkt. 52 (citing *Medhekar v. United States*, 99 F.3d 325, 326 (9th Cir. 1996)).)
21 Assuming the Court of Appeals' order does not moot the issue pending before this Court, this
22 Court concludes that plaintiff has not met the requirements for certification of an interlocutory
23 appeal as set forth in § 1292(b). Accordingly, plaintiff's consolidated motion is denied in this

1 respect.

2 (2) Plaintiff's requests for an extension of the deadline for filing a response to
3 defendants' pending summary judgment motion and for copies of documents from the court record
4 (Dkt. 48) are GRANTED in part. With respect to plaintiff's request for an extension of the
5 deadline to file his response, plaintiff claims that at the time his response was due he had
6 insufficient resources to conduct litigation, though he expected legal supplies he had ordered to be
7 delivered to him within two weeks. As those two weeks have now passed, the Court presumes
8 that plaintiff now has adequate supplies to prepare his response and the lack of supplies does not
9 require further extension of the deadline at this juncture.

10 Plaintiff also claims that he requires copies of additional documents currently on file with
11 the Court in order to file a meaningful response to defendants' pending summary judgment motion.
12 Specifically, plaintiff requests copies of docket numbers 23, 30 and 42. Plaintiff asserts that
13 because of transfers between institutions he is no longer in possession of his legal materials without
14 which he can't prepare a response. While the Court is reluctant to further delay consideration of
15 defendants' summary judgment motion, it appears that plaintiff may currently have limited control
16 over the legal materials he amassed while in custody at the Snohomish County Jail. It further
17 appears that the requested materials may, in fact, aid plaintiff in preparation of his response.
18 Accordingly, the Court will provide plaintiff with copies of the requested documents and will
19 establish a new deadline for plaintiff to file his response to defendants' summary judgment motion.
20 Plaintiff is on notice, however, that this is his *final* extension. If plaintiff fails to file his response
21 by the deadline established below, the Court will proceed immediately to resolution of defendants'
22 summary judgment motion based solely on the papers submitted by defendants.

23 (3) Plaintiff is directed to file and serve any response to defendants' summary judgment

1 motion not later than *August 10, 2020*. Defendants' motion for summary judgment (Dkt. 24) is
2 RE-NOTED for consideration on *August 14, 2020*.

3 (4) The Clerk is directed to send plaintiff a copy of this Order together with copies of
4 docket numbers 23, 30 and 42. The Clerk is further directed to send copies of this Order to counsel
5 for defendants and to the Honorable John C. Coughenour.

6 DATED this 25th day of June, 2020.

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9 Mary Alice Theiler
United States Magistrate Judge
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